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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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CYNTHIA GUTIERREZ, JOSE HUERTA, )  
SMH, RH and AH, )

Plaintiffs, )

vs. )

No. 4:16-cv-02645-DMR

SANTA ROSA MEMORIAL HOSPITAL, )  
ST. JOSEPH HEALTH and DOES 1-50, )  
inclusive, )

Defendants. )

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DEPOSITION OF  
STEWART LAUTERBACH, M.D.  
SANTA ROSA, CALIFORNIA  
MARCH 22, 2017

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REPORTED BY: MICHELLE D. BARBANTE, CSR NO. 12601

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Deposition of STEWART LAUTERBACH, M.D., taken on  
behalf of Defendants, at 131-A Stony Circle, Suite 500,  
Santa Rosa, California, commencing at 8:19 a.m.,  
Wednesday, March 22, 2017, before Michelle D. Barbante,  
CSR No. 12601.

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I N D E X

WITNESS: STEWART LAUTERBACH, M.D.

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By Mr. Fladseth	48, 58

EXHIBITS

LETTER	DEFENDANTS' DESCRIPTION	PAGE
A-	Santa Rosa Memorial Hospital ED Summary Report for 09/09/14 Bate-stamped SRMH0567 to SRMH0585	9
B-	Emergency Department Report dated 2/25/15 with Addendum 02/26/15	17

NUMBER	PLAINTIFF'S DESCRIPTION	PAGE
	(NONE)	

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

(NONE)

INFORMATION TO BE SUPPLIED:

(NONE)

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1 to maximize corporate profits at the risk of patient  
2 safety?

3 A. Never.

4 MR. SCHOEL: Okay. I have no more questions.  
5 Thank you, Doctor.

6 MR. NELSON: Mr. Fladseth.

7 EXAMINATION

8 BY MR. FLADSETH:

9 Q. All right. Good morning, Dr. Lauterbach.  
10 Obviously you're not a defendant in the case, certainly at  
11 this point, and I did not notice you --

12 MR. NELSON: That is an implied threat, so be  
13 very careful.

14 THE WITNESS: I heard that.

15 BY MR. FLADSETH:

16 Q. Well, anyway, I did not notice your deposition,  
17 so I am going to set forth a couple of objections on the  
18 record on that basis. That apparently Mr. Schoel advised  
19 me right before the start of the deposition that he was  
20 not able to find your addendum record, which is part of  
21 Exhibit 2 to your deposition, in the hospital records, and  
22 he was asking whether I even had that as part of the  
23 records that he'd been produced. And of course, I'm going  
24 to have to check with my consultants. And apparently  
25 there's thousands of pages of records, so obviously,

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1 before I take your deposition, I would want to be able to  
2 have all the records and have them reviewed with my  
3 consultants.

4           There's another issue in that this case is filed  
5 in federal court against the hospital, Santa Rosa Memorial  
6 Hospital and St. Joseph Health, and it's based in large  
7 part on EMTALA or commonly called the anti-dumping  
8 statute, okay. One of the things that's involved in that  
9 is we just had a ruling from the Court that we're able to  
10 discover whether there was any post-event investigation  
11 and review in state court. In California, there's  
12 ordinarily a peer review privilege under Evidence Code  
13 Section 1157, but the status of the case now is that that  
14 doesn't apply to this federal court case.

15           So obviously, I want to get the records from the  
16 hospital, and I've noticed the depositions of the persons  
17 most knowledgeable about any such peer review, so I want  
18 to get those records before I decide whose depositions,  
19 such as yours and Dr. Brandwene's, to take.

20           And so, again, I know Dr. Brandwene is going to  
21 be deposed after you today. I'm noting these objections  
22 for the record because I don't want to be prejudiced  
23 because of the unusual circumstance of the hospital taking  
24 their own ER doctor's deposition before I'm prepared to do  
25 so. So that's just my preamble for the record here.

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1 MR. NELSON: So let me make sure I understand  
2 this. So if you intend to not conclude your questioning  
3 today, leaving open the opportunity, pending upon these  
4 two factors that you mentioned, particularly the record,  
5 to come back and take his deposition, I'm going to put an  
6 end to it right now, and we're going to go -- and I'm not  
7 saying you don't -- you have an opportunity to  
8 cross-examine him, but I'm not putting him up today for  
9 your cross and then a week or a month or two months later  
10 for another shot it. So do you want to conclude all your  
11 exam today, or do you want us to come back at another time  
12 to finish your cross-examination of him?

13 MR. SCHOEL: And I want to put on the record,  
14 then, because we did discuss this before the deposition,  
15 and I did say, if we're going forward today, my position  
16 is that this is his deposition today. And I left it up to  
17 counsel that maybe we don't even go forward today because,  
18 I don't know the issue with the addendum, I don't know --  
19 I don't believe -- I'm not sure it's -- it's irrelevant  
20 whether it was in those records or not. We had it here  
21 today. It's three sentences. Whether your consultants  
22 have looked at it or not I think is irrelevant, and that I  
23 said we'll go forward with this deposition.

24 I've also said that I agreed with your -- that I  
25 agree with you that the court has ordered peer review



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1 information is discoverable, so that is open for  
2 deposition here today, but I'm just going to let you know,  
3 and we'll just agree to disagree, but my position was, if  
4 we start this deposition today, it needed to be finished  
5 today, and I gave the opportunity not to even start it and  
6 we decided to go forward.

7           So I will object to his -- regardless of what  
8 Mr. Nelson does for his client, I'm probably going to  
9 object to a continuation of this deposition if we don't  
10 finish it today. So that's just my position on the  
11 record, and we can debate that at a different time.

12           MR. FLADSETH: Right. Well, okay, so we do have  
13 some disagreements about that history. I have no power to  
14 prevent you from, as the hospital, from taking your  
15 doctor's deposition. And I certainly didn't agree that I  
16 was waiving any rights by you starting the deposition or  
17 that I was agreeing that I would complete the deposition  
18 today and be able to do so. And I did mention those  
19 two reservations I had, and I also mentioned to you that I  
20 can't stop you from taking the deposition today, so I want  
21 to be clear about that. I certainly wasn't relenting.

22           Now I do have questions I can ask today, but  
23 again, you know, I intend to go forward. If the doctor is  
24 not allowed to answer, I mean, I can't prejudice my client  
25 and say, "Yes, I'm going to go ahead," and that's going to

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1 be it, even though I haven't had a chance to review the  
2 addendum with my experts, and even though I don't have a  
3 chance now to see what, if anything, might have been a  
4 post-event review or a peer review or 1157 or any things  
5 like that. So, you know, I'm not sure where we're going  
6 to end up here, but I think we're all reserving our  
7 rights, and I certainly am.

8 MR. SCHOEL: That's fine. And it may be  
9 something we don't get -- it's not going to get settled  
10 today. And we've all stated our positions for the record  
11 and we can either try and work it all out or let the judge  
12 decide. I agree, you're right, I didn't -- I didn't want  
13 to suggest that you were waiving anything, but I also --  
14 you did tell me you can't -- you know, you can't stop me  
15 from having this deposition. But as I pointed out to you  
16 is that I was voluntarily -- we not do it today, because I  
17 understood that these three sentences in the record you  
18 may or may not have had, I don't know, and then I went  
19 ahead with my deposition.

20 But I don't think it is right for me to do my  
21 deposition, you get to answer some questions now and then  
22 force the doctor to come back later for another  
23 cross-examination, regardless if the hospital was the one  
24 who noticed his deposition or not. It's entirely within  
25 my right to notice the deposition. He's not an employee

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1 of the hospital, and even if he was, I can still take his  
2 deposition. So the fact that the hospital choose to take  
3 his deposition seven months after we've -- seven months  
4 into being into this case, is irrelevant.

5 That being said, I'm -- I'm not going to object  
6 to any peer review questions. I have no idea whether this  
7 doctor has any information about it, so you're well within  
8 your rights to ask those questions. You're not being  
9 prevented by that today. I'm not going to make any  
10 objections to any peer review questions.

11 And then, of course, his own counsel has his own  
12 issues about bring him back, so --

13 MR. NELSON: Tell me, Doug, what was the date of  
14 the order relative to the peer review?

15 MR. FLADSETH: It was like two weeks ago.

16 MR. NELSON: Oh, it was very recent.

17 MR. SCHOEL: I think it was like last week.

18 MR. NELSON: So let me just tell you: I  
19 understand what you're talking about, and I am not going  
20 to -- I know you well enough that you're going -- you're  
21 going to have questions about that addendum. So what I  
22 strongly propose is that -- in fact, I'm going to do it --  
23 is we're going to terminate right now. We'll come back  
24 when you tell me you want to take -- continue with  
25 Dr. Lauterbach's deposition. I'm going to do the same

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1 thing with Dr. Brandwene. It's no sense having him come  
2 here with the potential, although he didn't do the --  
3 Brandwene didn't do the addendum -- to do -- questions to  
4 come up about that and we have to come back with him.

5 It's just -- it's too bad we had to bring Dr.  
6 Lauterbach here today for a partial. I don't want to  
7 inconvenience my other client. So that's what -- that's  
8 my position. Unless somebody is going to yell and scream  
9 at -- at me, and that usually doesn't change my opinion,  
10 that's what we're going to do. Okay? Okay.

11 Okay? Okay.

12 MR. SCHOEL: Well, hold on. Let me yell and  
13 scream.

14 MR. FLADSETH: So wait a second. Hold on. Hold  
15 on.

16 MR. NELSON: Well, I mean, you know, the reason  
17 is, is that we pulled him, you know, he worked all -- you  
18 don't need to hear this. You know what I'm going to say.  
19 It's just inconvenient to the doctor. I know both of you  
20 guys didn't do it on purpose. I'm not implying that. I'm  
21 just trying to look out for him and his schedule.

22 That being said, let's do it the civil way,  
23 which is, when you're ready, you let me know, coordinate  
24 it with Brett, and we'll present Dr. Lauterbach.

25 MR. FLADSETH: Right. And I just -- you know, I

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1 just want to note that this is -- I mean, I was a defense  
2 attorney for many years, including for this hospital, and  
3 I don't think I've ever seen a hospital depose their own  
4 doctor. So right from the get-go I'm concerned. And of  
5 course it crosses one's mind that there's the potential  
6 anyway, without making any accusations, for collusion in  
7 order to, you know, take the deposition now when I'm not  
8 fully prepared, and then I don't get, you know, to the  
9 bottom of all these things.

10 So that's -- you know, that's my, you know,  
11 major reason for saying, you know, I need a chance to get  
12 all the records, which apparently we don't have at this  
13 point, and I need a chance to find out what, if anything,  
14 happened and a follow-up investigation, because that's  
15 open season right now. So I can't be prejudiced by, you  
16 know, not being able to go into those things.

17 And that -- again, that's why I haven't noticed  
18 this deposition at this point. I understand there's some  
19 timing issues, which we're going to have to, you know,  
20 obviously deal with fairly soon, but I think that's my  
21 position.

22 MR. NELSON: Okay.

23 MR. SCHOEL: All right. And first of all, I  
24 just want to say, even though you didn't make any  
25 accusations, the implication is offensive that there's

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1 collusion, so I don't appreciate that being put on the  
2 record, and I will make that very clear that I don't even  
3 appreciate the implication that there's some sort of  
4 collusion.

5 The second part of it is, I've not -- for the  
6 record, I've stated it and I'll state it again -- I'm not  
7 making any objection to any questions regarding peer  
8 review. As you put it, it's open season. The doctor's  
9 here. I'm not making or stopping this deposition based on  
10 any type of peer review issue.

11 Since we are finishing up here, the one thing I  
12 would ask, though, Jim, is that I did forget -- if I can  
13 ask just a few more questions about the doctor's  
14 background. I just want to -- because I didn't have a  
15 CV -- I just want maybe four questions, in case we don't  
16 get another chance to come back, even though it looks like  
17 we are, I'd like to have his background information right  
18 now, just where he went to school and where he's  
19 practicing, if that's okay with you, Counsel.

20 MR. NELSON: Four questions on the background  
21 only.

22 MR. SCHOEL: On the background only.

23 FURTHER EXAMINATION

24 BY MR. SCHOEL:

25 Q. Doctor, where did you go to medical school, when